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to be eminently desirable for the protection of attorneys, and it is quite commonly allowed. *Jones* v. *Morgan*, 39 Ga. 310; *Pilkington* v. *Brooklyn Heights R. Co.*, 49 N. Y. App. Div. 22, 63 N. Y. Supp. 211. It has sometimes been thought that its existence is an anomaly. See *Coughlin* v. *New York, etc. R. Co.*, *supra*, 448. It is submitted, however, that it can be justified by reference to the summary or equitable jurisdiction possessed by common-law courts to prevent an abuse of their authority. See SMITH, ACTION AT LAW, 10 ed., 20–23.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — BANKRUPT'S TITLE IN CAUSE OF ACTION BEFORE APPOINTMENT OF TRUSTEE. — A voluntary bankrupt brought suit against the defendant after filing the petition, but before the election of a trustee. *Held*, that the defendant may not defeat the suit by showing the pendency of the bankruptcy proceedings. *Johnson* v. *Collier*, U. S. Sup. Ct., Jan. 9, 1912.

Though authorities are few, the better opinion seems to be that the title to the bankrupt's property after the adjudication and prior to the election of a trustee is not *in custodia legis*, but is defeasibly vested in the bankrupt. See 20 HARV. L. REV. 411; 21 *id.* 531; 25 *id.* 79.

BANKRUPTCY — SET-OFF — DEBT OF BANKRUPT AND DEBT OF CREDITOR TO TRUSTEE. — A trustee in bankruptcy sued on a claim for services rendered by him as trustee. The defendant set up a counterclaim for the failure of the bankrupt to perform a contract. This failure had occurred subsequently to the bankruptcy. The Bankruptcy Act, § 68, allows set-offs in "cases of mutual debts or mutual credits;" the set-off against the bankrupt must be a provable claim. *Held*, that the set-off should not be allowed. *Howard* v. *Magazine & Book Co.*, 131 N. Y. Supp. 916 (App. Div.).

Mutual debts must be in the same right. *Wright* v. *Rogers*, 3 McLean (U. S.) 229; *Bausman* v. *Kinnear*, 79 Fed. 172. The trustee in bankruptcy acts in a dual capacity, representing the creditors and the bankrupt. Rights and obligations passing to him from the bankrupt are in the interest of the bankrupt; obligations incurred by him subsequently, in that of the creditors. Obligations of the latter kind must be settled in full, whereas the bankrupt's creditors obtain only a dividend. The debts are clearly in different rights, and it would be unfair to give one creditor full payment, merely because he became indebted to the trustee. The English law under like statutes is in accord. *Alloway* v. *Steere*, 10 Q. B. D. 22; *West* v. *Pryce*, 2 Bing. 455. The converse of the principal case should be similarly decided. But see *In re Crystal Spring Bottling Co.*, 100 Fed. 265. The case suggests the further question whether a claim on an executory contract is provable at all. See BANKRUPTCY ACT OF 1898, § 68. If the contract is unilateral, it should be, for there is a fixed liability of the bankrupt to perform; but when it is an assignable bilateral contract, there is a contingency that the trustee will elect to make it his own and not the bankrupt's, and the provability of contingent claims is doubtful. See 23 HARV. L. REV. 636.

BANKRUPTCY — VOLUNTARY PROCEEDINGS — DISTRIBUTION OF SURPLUS. — After the principal of all approved claims against a voluntary bankrupt's estate was paid in full, together with interest to the date of filing of the petition, a large surplus remained in the hands of the trustee. *Held*, that those who held approved claims are entitled to interest accruing on them after the filing of the petition. *Johnson* v. *Norris*, 190 Fed. 459 (C. C. A., Sixth Circ.).

Under the present bankruptcy act, insolvency is not a requisite to filing a voluntary petition. BANKRUPTCY ACT OF 1898, § 4 *a*. See 1 REMINGTON, BANKRUPTCY, § 42; COLLIER, BANKRUPTCY, 8 ed., 96. But the act makes

no provision for the disposition of a surplus remaining after all debts of the bankrupt are paid in full. Therefore, as to such a surplus, the court is remitted to ordinary equitable principles, and it is equitable that the bankrupt should get the surplus only after the trustee has paid the creditors the interest on their claims up to the date of payment. A similar result was reached under the Act of 1867, under a former English act, and under several state insolvency laws. *In re Hagan*, Fed. Cas., No. 5898; *Bromley* v. *Goodere*, 1 Atk. 75; *Williams* v. *American Bank*, 45 Mass. 317. In the only other case involving the distribution of a surplus under the present act, this point seems to have been assumed. *Re Osborn's Sons & Co.*, 177 Fed. 184.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — DUTY TO PROTECT FROM ARREST. — The plaintiff was a passenger in a sleeping car on the defendant's train. Public officers, having information that a person suspected of having committed murder in Indiana was in the berth occupied by the plaintiff, boarded the train in New York, and showed their police badges to the conductor, who pointed out the plaintiff's berth. The plaintiff was arrested without a warrant and removed from the train, but was released the following day. *Held*, that the defendant is not liable. *Burton* v. *New York, etc. R. Co.*, 46 N. Y. L. J. 1287 (N. Y., App. Div., Dec., 1911).

Although the carrier is bound legally to use the highest degree of care practicable to protect passengers, it is not an insurer of their safety. *Boyce* v. *Anderson*, 2 Pet. (U. S.) 150; *Wright* v. *Chicago, B. & Q. R. Co.*, 4 Colo. App. 102, 35 Pac. 196. The majority opinion in the principal case, proceeding on the ground that the arrest was valid, coincides with settled law that the carrier owes no duty to interfere with the lawful arrest of a passenger. See *Brunswick & Western R. Co.* v. *Pouder*, 117 Ga. 63, 43 S. E. 430, 431. It would seem that the carrier owes no greater duty of protection from unlawful arrest by officers having apparent authority. See *Duggan* v. *Baltimore & Ohio R.*, 159 Pa. St. 248, 255, 28 Atl. 182, 185. The carrier is not negligent in submitting to the demands of officers whose duty it is to enforce the laws. *Mayfield* v. *St. Louis, I. M. & S. Ry. Co.*, 97 Ark. 24, 133 S. W. 168. See 2 HUTCHINSON, CARRIERS, 3 ed., § 987. To hold otherwise would impose upon the carrier the precarious duty of passing on the right of a legal officer to make an arrest. *Bowden* v. *Atlantic Coast Line R. Co.*, 144 N. C. 28, 56 S. E. 558. The argument of the dissenting judge is based partly on the analogy of attachment of goods in the hands of the carrier, who is protected only if the process is valid. *Edwards* v. *White Line Transit Co.*, 104 Mass. 159. It is submitted that this ignores the distinction between the liability of the carrier of goods and that of the carrier of passengers.

CONFLICT OF LAWS — SITUS OF CHOSES IN ACTION — ATTACHMENT OF STOCK CERTIFICATES. — The plaintiff brought an action in Kentucky and recovered judgment against the defendant A., a resident of New York. The plaintiff, in proceedings under a Kentucky statute, served a writ of attachment on the defendant B., a Delaware corporation having its principal office, its books, its plant, and all its assets in Kentucky. The attachment covered a certificate for stock transferred to B. by A. in fraud of creditors, and also stock, the certificate for which A. himself held in New York. *Held*, that the attachment is valid as to all the shares. *Bowman* v. *Breyfogle*, 140 S. W. 694 (Ky.).

As a corporation exists only at its domicile, its stock should be attachable there alone, irrespective of the location of the certificates. *Ireland* v. *Globe Milling and Reduction Co.*, 19 R. I. 180, 32 Atl. 921; *Christmas* v. *Biddle*, 13 Pa. St. 223; *Smith* v. *Downey*, 8 Ind. App. 179. Two courts, however, hold the contrary view, considering that stock certificates are now generally treated